



DOP CONTRACT NUMBER: _____

**PERSONAL SERVICES CONTRACT
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF PERSONNEL
AND
[INSERT PROVIDER'S LEGAL NAME]**

This Contract is made and entered into by and between the State of Washington Department of Personnel (DOP), 521 Capitol Way S, Olympia, WA 98504-7500, on behalf of the Employee Assistance Program (EAP) located at 701 Dexter Ave N., Suite 108; Seattle, WA 98109, and [Provider's legal name] (Network Provider or Contractor) at [Provider's address].

PURPOSE

This Contract was awarded through a Request for Qualifications for EAP Network of Contracted Providers. The purpose of this Contract is to acquire the services of qualified Employee Assistance Professionals. These professionals will be included in a network of qualified EAP providers to which WA State EAP clients will be referred on an as needed basis. This Contract is a Services for Standard Fee Personal Services contract and is authorized under chapter 39.29 Revised Code of Washington, and is exempt from Personal Services requirements.

BACKGROUND

The Department of Personnel (DOP) provides human resource leadership and solutions to enable state government to deliver public sector excellence.

As the central human resource agency for the state, DOP provides a full range of human resource services to state agencies, higher education institutions, state employees, and - in some instances - to other public sector and non-profit organizations.

DOP's Employee Assistance Program (EAP) is an internal employee assistance program located within Department of Personnel for Washington State employees, other governmental entities, and their family members. The EAP helps state employees with personal or work-related problems that may be impacting their work performance.

DOP's Request for Qualifications (RFQ) was issued to establish a network of qualified employee assistance providers to provide EAP services to state employees in the remote areas of the state. These Network Providers have been selected through the RFQ process for inclusion in the Network of Providers.

In consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the parties mutually agree as follows:

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the Terms and Conditions contained in the text of this Contract instrument and Attachment B, *General Terms and Conditions*.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Contract shall commence when executed by both parties and be completed on June 30, 2011 unless terminated sooner as provided herein.

DEFINITIONS

The following terms as used throughout this Contract shall have the meanings set forth below.

"Applicant" shall mean a person or organization submitting an Application in response to this Contract.

"Application" shall mean Applicant's response to this Contract.

"Client" shall mean the individual employee or employee's family member who has been referred to the provider by the WA State EAP.

"Contract" shall mean Contracts, if any, that may result from the RFQ, including all Attachments, Exhibits, amendments, and the Applicant's Application in response to the RFQ.

"Department of Personnel" or "DOP" shall mean the State of Washington Department of Personnel, any division, section, office, unit or other entity of DOP or any of the officers or other officials lawfully representing DOP.

"EAP Client Record" shall mean all records that Network Providers create and maintain in connection with providing services to a Client under this Contract, including all forms and case notes Network Provider completes or takes. The EAP Client Record includes at a minimum the following DOP/EAP forms:

- a. Statement of Understanding
- b. Client Intake Data Form
- c. Notice of Privacy Practices Acknowledgement Form
- d. Intake Assessment
- e. Recommendation and Case Closure Form
- f. Referral; Waiver Form
- g. Invoice form(s)
- h. Authorization for Release of information, if appropriate

"Employee Assistance Program Services" or "EAP Services" shall mean the set of services for which DOP has contracted with Network Provider to provide to its employees on an as needed, referral basis. Such services may include face-to-face assessment and referral, assessment and short-term intervention, and assessment and short-term problem resolution.

"Employer" shall mean the entity that employs Client.

"EAP Provider" shall mean a behavioral health, substance abuse professional, or Employee Assistance Professional who has been approved by DOP and who is governed by this Contract.

"Emergency" shall mean situations where the Client's circumstances require immediate intervention by the provider and will be seen or referred to an appropriate referral the same day.

"Personal Services" shall mean professional or technical expertise provided by Contractor to accomplish a specific study, project, task or duties as set forth in this Contract. Personal Services shall include those services specified in the Office of Financial Management's (OFM) *Guide to Personal Service Contracting*, located at <http://www.ofm.wa.gov/psc/pschpt1.htm#A52>, (RCW 39.29.006(7) and OFM *State Administrative and Accounting Manual*, Chapter 15.10).

"Network Provider" shall mean the Applicant(s) with whom DOP enters into a contract as a result of the RFQ issued August 25, 2008. Network Provider includes any firm, organization, or individual performing work under the Contract.

"RCW" shall mean the Revised Code of Washington.

"RFQ" shall mean this Request for Qualifications used to competitively acquire Employee Assistance Program (EAP) Network of Contracted Providers.

"Routine" shall mean situations where the Client's circumstances do not require immediate intervention by the provider and an appointment can normally be scheduled within one to three business days.

"Standard Fee" shall mean fees DOP pays for the Services under this Contract, which shall be paid in United States dollars.

"Urgent" shall mean situations where the Client's circumstances do not require immediate intervention by the provider, but are of sufficient severity to necessitate prompt intervention (within two business days of the initial Client contact).

"Visit" shall mean the face-to-face one hour period during which the Network Provider provides a minimum of 50 minutes of time with the Client and approximately 10 minutes of time creating and maintaining EAP Client Record for that specific Client, not to exceed 60 minutes in total. Telephone time spent contacting or attempting to contact the Client shall not be included within the meaning of Visit, unless specifically authorized in advance by EAP.

STATEMENT OF WORK

Network Provider shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work specified in Attachment A, *Statement of Work*. As needed, and on a referral basis, Network Provider shall provide EAP Services as outlined herein.

PROVIDER REPRESENTATIONS AND WARRANTIES

Network Provider makes the following representations and warranties:

- a. Licensing. Network Provider is certified or licensed to practice its profession and is in good standing in Washington State.
- b. Application Process. Network Provider has submitted a required application to DOP through the RFQ process, and has attested to the accuracy of the application and supporting documentation. Network Provider acknowledges that this Contract and any renewals shall not be effective until Network Provider has received approval from EAP's Program Manager and have been so notified as such.

DOP/EAP OBLIGATIONS

- a. Referrals. EAP will conduct initial screening and eligibility determinations, and determine the appropriateness of face-to-face assessment. As appropriate, EAP will then provide the Client with provider's name and contact information from the EAP Network of Contracted Providers and instruct the Client to contact the Network Provider to schedule an appointment. EAP will contact the Network Provider and notify them of the referral. Authorizations are made for a specific Network Provider only. If the Client needs to be referred to another EAP Provider, Network Provider must contact EAP for authorization, or for re-referral. **EAP is responsible for pre-authorizing all EAP Services and will not reimburse Network Provider for EAP Services it provides without prior, written authorization.**
- b. Forms and Manuals. EAP will provide Network Provider with the *EAP Network of Contracted Providers Guidelines* and forms described herein. All current forms and manuals can be found at www.dop.wa.gov/EAP. Network Provider is required to use the most current version of forms and manuals available on the web site. It is the responsibility of the Network Provider to check the URL provided above for the most current version of clinical forms.

CONTRACT MANAGEMENT

EAP's Program Manager shall provide assistance and guidance for the performance of this Contract. EAP's Program Manager shall be responsible for the review and acceptance of the Network Provider's performance, deliverables, invoices, and accepting any reports from the Network Provider.

The Network Provider Contract Manager responsible for management of this Contract is:

Name:	
Title:	
Address	
Telephone Number:	
FAX Number:	
E-mail Address	

The DOP Program Manager responsible for the management of this Contract is:

Name:	Carol Kramer
Title:	Program Manager
Address	1222 State Avenue NE, Suite 201, Olympia, WA 98504-7540
Telephone Number:	(360) 753-3260
FAX Number:	(360) 664-0498
E-mail Address	carolk@dop.wa.gov

PAYMENT SCHEDULE

This is a Service for a Standard Fee Contract. Network Provider shall be paid Sixty dollars (\$60.00) per EAP Visit performed under this Contract. The benefit per referral shall not exceed three (3) sessions or a total of One Hundred Eighty dollars (\$180.00).

The Network Provider will not be reimbursed for travel expenses or any other cost or expense without prior written authorization from the DOP Contract Manager.

BILLING PROCEDURE

Upon completion of services, the Network Provider shall submit an invoice for services performed under this Contract. Invoices shall include the following: Network Provider's name, address, phone number, and federal tax identification number; detailed description of services provided; date(s) that services were provided, the referral number provided by EAP; including number of hours worked; net invoice price for each service; total invoice price; and DOP Contract Number _____. **The Client name must not appear on the invoice(s).**

EAP must receive all invoices no later than thirty (30) days after the completion of the Services. Failure by the Network Provider to submit the bill by the date specified above may result in delayed payment. DOP shall pay the Network Provider for completed and approved work within thirty (30) days of receipt of a properly completed invoice.

The invoice must be accompanied by the Closing and Clinical Forms for the services performed. If the required completed forms are not included with the invoice, EAP shall not remit payment to Network Provider until a reasonable time after such forms have been provided to DOP.

DOP shall not pay for services that are not preauthorized by EAP through the referral process.

The original and one copy of each invoice, along with the required forms, shall be submitted to:

DOP/EAP
Attention: Norma Luna
701 Dexter Avenue NE, Suite 201
Seattle, WA 98109

DOP will not accept invoices via email.

If Network Provider has multiple referrals with EAP, Network Provider shall submit separate invoices for each referral. Network Provider must not directly bill Client for EAP Services provided pursuant to this Contract.

STATEWIDE VENDOR REGISTRATION

The Washington State Office of Financial Management (OFM) maintains a central vendor registration file for Washington State agencies to process contractor payments. Registration information and materials are available at <http://www.ofm.wa.gov/accounting/vendors.asp>.

Network Provider is required to be registered in the Statewide Vendor Payment system prior to submitting a request for payment under this Contract. Washington State agencies require registration to be completed prior to payment.

ORDER OF PRECEDENCE

Each of the documents listed below is by this reference hereby incorporated into this Contract.

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- 1) Applicable Federal and State Statutes and Regulations;
- 2) Special Terms and Conditions as contained in this Contract;
- 3) Attachment A, *Statement of Work*
- 4) Attachment B, *General Terms and Conditions*;
- 5) DOP's RFQ for EAP Network of Contracted Providers number K293 dated August 25, 2008;
- 6) Network Provider's Application in response to DOP's Acquisition for EAP Network of Contracted Providers number K293 dated August 25, 2008, and
- 7) Any other provision, term, or material incorporated into this Contract whether incorporated by reference or otherwise.

INSURANCE

The Network Provider shall provide a copy of insurance face sheet for coverage information as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Network Provider or agents of either, while performing under the terms of this Contract. The Provider shall provide insurance coverage, which shall be maintained in full force and effect during the term of this Contract, as follows:

1. **Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.
2. **Professional Malpractice Insurance.** Provide Professional Malpractice Insurance Policy in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence and \$3,000,000 aggregate.
3. The Network Provider will provide DOP with a copy of the applicable insurance face sheet(s) reflecting these types of coverage and limits defined in this section. Insurance coverage(s) must be effective no later than the effective date of this Contract and for the term of this Contract. Network Provider shall submit renewal certificates as appropriate during the term of this Contract.

Network Provider shall submit to DOP within fifteen (15) calendar days of the insurance renewal date, a current certificate of insurance that outlines the coverage and limits defined in the this Contract.

GENERAL TERMS AND CONDITIONS MODIFIED

The following changes have been made to the General Terms and Conditions in Attachment B, and take precedence.

Part I - Definitions

The term "Subcontractor" is hereby deleted from the definitions as subcontracting is not allowed under this Contract.

Part II - General Conditions

2. ACCESS TO DATA

The following sentence shall be added to this clause:
"EAP Client records shall not be subject to such audits."

3. ANTI-TRUST AGREEMENT

This clause is deleted in its entirety.

8. COMMENCEMENT OF CONTRACT WORK

This Contract is exempt from the state of Washington Office of Financial Management (OFM) filing requirements, and therefore this clause is deleted in its entirety.

12. COPYRIGHT PROVISIONS

There is no works for hire under this Contract therefore this clause is deleted in its entirety.

25. PRICE WARRANT

As this is a Standard Fee Personal Services contract in which DOP sets the rate it will pay the Network Provider, this clause is deleted in its entirety.

33. SITE SECURITY

Is hereby deleted in its entirety and replaced with:

DOP and its authorized representatives shall have the right to access, examine and inspect any site where any services performed under this Contract is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Network Provider.

34. SUBCONTRACTING

This clause is deleted in its entirety and replaced with:

The Network Provider shall not subcontract work or services contemplated under this Contract and/or use an outside consultant.

ALL WRITINGS CONTAINED HEREIN

This Contract, including all referenced attachments, sets forth in full the entire agreement of the parties in relation to the subject matter hereof. Any other agreement, representation, or understandings, verbal or otherwise, relating to the professional services of the Network Provider or otherwise dealing in any manner with the subject matter of this Contract is hereby deemed to be null and void and of no force and effect whatsoever.

APPROVAL

This Contract shall be subject to the written approval of DOP's authorized representative and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this Contract.

[Insert other party's legal name]

State of Washington
Department of Personnel
Employee Assistance Program

By: _____

By: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Washington State UBI Number: _____

Statewide Vendor ID Number: _____

STATEMENT OF WORK

The following Contractor staff **has/have** been approved to provide services under this Contract. Contractor may not assign work to anyone who has not been pre-approved by DOP/EAP.

- [insert name]

Network Provider shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work specified herein. As needed, and on a referral basis, Network Provider shall provide EAP Services as outlined herein.

- a. Assessment/Referral Services. For each Client EAP refers to Network Provider, Network Provider will perform the face-to-face EAP assessment described in *EAP Network of Contracted Providers Guidelines* and will make referrals to appropriate local resources and contact EAP regarding short-term problem resolution. Visits with the Client are to be within the time frames set forth in the *EAP Network of Contracted Providers Guidelines*. If Network Provider is unable to provide EAP Services, the Network Provider will contact EAP so that EAP can refer the Client elsewhere.
- b. Accessibility. Network Provider will:
 - i. Contact Clients within one (1) business day of receiving referral from EAP. The Client will contact provider and EAP will also call provider to alert of referral.
 - ii. Offer appointment times for routine referrals within three (3) business days from the time the Client contacts Network Provider requesting service.
 - iii. Offer appointment times for Urgent referrals within one to two (1-2) business days from the time the Client contacts Network Provider's Office requesting service.
 - iv. Maintain the ability to receive confidential messages from WA State EAP (via a confidential answering service, answering machine or voice message box with appropriate security) with detailed referral information on a 24 hours per day, 7 days a week basis.
 - v. Notify EAP's referral source within one (1) business day (at the phone number listed in the *EAP Network of Contracted Providers Guidelines*, or given in the referral documentation) if Network Provider is unable to receive EAP referrals for any reason.
- c. Authorized EAP Network Providers. If the Contracted Network Provider is a member of a clinic or group practice, the Network Provider shall ensure that Clients receive EAP Services only from Washington State contracted Network Providers within its clinic or practice. The Network Provider will not allow any member of its clinic who has not been contracted by Washington State EAP to provide EAP Services to a Client. Network Provider will not be paid and shall not bill anyone else, including Client, for any EAP Services provided by a member of the Network Provider's clinic or practice who is not a Washington State EAP Network of Contracted Providers.
- d. Statement of Understanding. Network Provider will present each Client with the Washington State EAP-approved and -provided *Statement of Understanding* form. Network Provider will require each Client to read and sign the *Statement of Understanding* form before proceeding with the face-to-face assessment. If the Client chooses not to sign the *Statement of Understanding* form, then Network Provider will not proceed with the assessment.
- e. Mandated Reporting and Permitted Disclosures. Network Provider will make any report it is required to make under federal and/or state law, including, but not limited to, reporting child or elder abuse and neglect. Network Provider may also make any disclosures it is permitted to make under federal and/or state law, including, but not limited to, notifying a third party of a Client's threat to harm a third party, also known as duty to warn, and will make such disclosures according to the current standard of practice. Network Provider will notify EAP of any such report or disclosure involving a Client.
- f. Record Keeping. Network Provider will maintain an EAP Client Record for each Client that EAP

refers. The EAP Client Records must comply with this Contract, applicable law, and the current standard of practice. Network Provider acknowledges that the EAP Client Record, whether comprised of originals or copies, is the property of EAP, regardless of whether Network Provider retains copies of such records. Network Provider shall individually sign, date, and include its credentials on all forms and records contained in the EAP Client Record. Network Provider shall keep a record of all Client Visits that includes the time and date of the Visit. EAP requires Network Provider to complete the following forms:

- a. Statement of Understanding
- b. Client Intake Data Form
- c. Notice of Privacy Practices Acknowledgement Form
- d. Intake Assessment
- e. Recommendation and Case Closure Form
- f. Referral; Waiver Form
- g. Invoice form(s)
- h. Authorization for Release of information –if appropriate

Network Provider will use only the most current forms as EAP provided on the EAP web site at www.dop.wa.gov/EAP. Network Provider will maintain EAP Client Records in a secure location and will only provide access to its staff on a "need to know" basis to facilitate billing or to comply with the terms of this Contract.

Network Provider shall retain the EAP Client Record for a minimum of eight (8) years, unless a longer time period is required by applicable statutes or regulations. After this time period elapses, Network Provider will follow secure procedures for the destruction of records. Additional requirements with respect to confidentiality are set forth below.

- g. Electronic Data Breach. Some portions of EAP Client Records may constitute personal Information subject to the provisions of RCW 19.255.010 and RCW 42.56.590, which govern security breaches of computerized data. For purposes of this section, "personal information" is defined as set forth in RCW 19.255.010 and RCW 42.56.590. In the event of a breach of security resulting in the unauthorized disclosure of the personal information, Network Provider agrees to notify EAP within one business day and to comply with these statutory provisions as applicable. If a data compromise and/or identity theft occurs and is found to be the result of Network Provider's failure to take reasonable security precautions including but not limited to adoption and enforcement of a technology security policy, Network Provider shall be liable for all associated costs incurred by DOP in responding to or recovering from said breach."
- h. Dual Relationship. Network Provider acknowledges that the EAP serves a dual role to both Employers and Clients who are their employees. Network Provider agrees that during the course of providing EAP Services to a client, it will not:
 - i. Comment, advise or give information about legal actions against the Client's Employer.
 - ii. Directly communicate with the Employer.
 - iii. Provide the Employer with information regarding the Client's issues or concerns or referrals made as part of the assessment.
 - iv. Perform psychological evaluations of a Client for any purpose, including court-ordered evaluations, or make recommendations regarding Client medical leave or fitness for duty.
- i. Administrative Requirements and Quality Assurance Programs. Network Provider will comply with all administrative requirements and obligations set forth in the *EAP Network of Contracted Provider Guidelines* and cooperate with EAP's Quality Assurance Program. EAP Quality Assurance Programs include:
 - i. Case review
 - ii. Accessibility tracking
 - iii. Client satisfaction surveys
 - iv. Practice pattern reporting/provider profiling data

Network Provider acknowledges that EAP has the right to audit all information and records related to its provision of EAP Services under this Contract to assure compliance with this Contract, EAP's administrative requirements and Quality Assurance Programs and Provider shall cooperate with any such audits. EAP shall have access to and the right to audit information and records, including invoices, during the term of this Contract and for six (6) years following its termination. EAP Client Records shall be retained as described in section f., *Record Keeping*, above.

Additionally, Network Provider shall cooperate and comply with EAP grievance procedures, including any appeal procedures.

- j. Office Environment. Network Provider will maintain office environments (primary and satellite offices) in which it furnishes EAP Services to Clients that are:
 - i. Safe
 - ii. Clean
 - iii. Free of fire hazards
 - iv. Smoke-free
 - v. Professional
 - vi. ADA Compliant
- k. Referral Waiver for Retaining Client. When the authorized Visits are exhausted, and before Network Provider may continue to see the Client through the Client's insurance benefits or private payment, Network Provider must complete and submit a Referral Waiver described in the *EAP Network of Contracted Providers Guidelines*. Network Provider must also identify for the Client at least two practitioners qualified to provide for ongoing counseling other than itself or any other person or organization in which it has a financial interest. Network Provider must document that it has offered the referrals and that the Client has acknowledged receipt of such referrals. The Referral Waiver must be completed during the last authorized EAP Visit.
- l. Case Closure. All cases shall be completed timely as set for in the *EAP Network of Contracted Providers Guidelines*. Network Provider will not be reimbursed for EAP Services provided to the Client beyond these time frames without prior, written authorization by the Contract Manager.
- m. Client Confidentiality. Network Provider shall maintain the confidentiality of all information regarding Clients in accordance with this Contract and any applicable federal and state statutes and regulations, including but not limited to Public Laws 91-616 and 92-255, the Drug Abuse Office and Treatment Act of 1972, 21 U.S.C. 1175; the Comprehensive Alcohol Abuse and Alcoholism Treatment and Rehabilitation Act of 1970, 42 U.S.C. 4582; the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a; 45 C.F.R. Parts 160 and 164 (HIPAA Privacy and Security Rules), 42 C.F.R., Part 2, and any other applicable federal and/or state laws.

In the event Network Provider receives a release, subpoena, court order, or other legal demand for disclosure of the EAP Client Record, Network Provider may disclose the EAP Client Record in compliance with applicable state and federal laws. Network Provider will promptly notify DOP/EAP of any release, subpoenas, court orders, or other legal demands.

If Network Provider becomes aware of a conflict of interest between two or more EAP Clients for whom it is providing EAP Services, it shall maintain confidentiality of all information received from and regarding such EAP Clients and shall refer, to the extent necessary, one or more of the Clients to EAP for referral to another EAP Provider.
- n. Update of Provider Information. Network Provider shall notify EAP immediately if there is a change to any of its contact or other information contained in this Contract or otherwise provided to EAP. EAP will use the address stated herein for all communications with Network Provider regarding this Contract, including notice of and any modifications to DOP forms, policies, and procedures, unless EAP is notified of a new address in writing as provided in the Contract Management section of this Contract. Network Provider will provide EAP with current copies of licensing, insurance and other

required documents (including renewals) to EAP as identified in this Contract.

GENERAL TERMS AND CONDITIONS

PART I - DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below.

- A. "Contractor" shall mean that agency, firm, organization, individual or other entity performing services under this Contract. It shall include any Subcontractor retained by the prime contractor as permitted under the terms of this Contract.
- B. "DOP" shall mean the Washington State Department of Personnel, any division, section, office, unit or other entity of that DOP or any of the officers or other officials lawfully representing DOP.
- C. "Subcontractor" shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this Contract under Contract from the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontract(s) in any tier.

PART II - GENERAL CONDITIONS

1. ACCEPTANCE

It is understood and agreed by and between DOP and the Contractor that the Contractor's payment is conditioned upon satisfactory performance and acceptance by DOP. The DOP reserves the right to withhold payment of any deliverable contingent upon acceptance of the deliverable by DOP. If defects preventing acceptance of a deliverable are present, DOP shall immediately notify the Contractor in writing of the nature of the defects and the method of remedy of those defects. The Contractor will take timely action to remedy defects as to permit acceptance of the subject deliverable. Notwithstanding the other provisions of this Contract, DOP shall not unreasonably withhold acceptance of a deliverable nor reimbursement of the Contractor.

2. ACCESS TO DATA

In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this Contract to DOP, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payment in advance or in anticipation of service(s) or supplies to be provided by this Contract shall be made by DOP.

4. ANTI-TRUST ASSIGNMENT

The Contractor hereby assigns to the state of Washington any and all its claims for price fixing or overcharges which arise under the anti-trust laws of the state of Washington, relating to the goods, products or services purchased under this Contract.

5. ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

6. ASSURANCES

The DOP and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

7. CHANGES AND MODIFICATIONS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

8. COMMENCEMENT OF CONTRACT WORK

Unless specifically exempted, the state of Washington Office of Financial Management (OFM) requires that all sole source personal service contracts and amendments thereto and competitively bid personal service contracts for management consulting, organizational development, marketing, communications, employee training and employee recruiting be approved by OFM to become binding. The personal service contract and amendments thereto must be filed with OFM at least ten (10) working days prior to the effective date. No work may be performed nor any payment be rendered or obligation for future payment be incurred prior to the completion of the ten (10) working day period and approval of OFM.

9. CONFIDENTIALITY/SAFEGUARDING INFORMATION

The Contractor shall not use or disclose any:

- a. Information concerning DOP, or
- b. Information which may be classified as confidential,

For any purpose not directly connected with the administration of this Contract except (1) with prior written consent of DOP, or (2) as may be required by law.

10. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, DOP may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by DOP that there is a violation of the Ethics in Public Service Act, RCW 42.52, or any similar statute involving the Contractor in the procurement of, or performance under, this Contract.

In the event this Contract is terminated as provided above, DOP shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of DOP provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which DOP makes any determination under this clause shall be an issue and may be reviewed as provided in Section 16, *Disputes*, of this Contract.

11. CONFORMANCE

If any provision of this Contract is in conflict with or violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by DOP. DOP shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright Laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to DOP effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Contract, but that incorporate preexisting materials not produced under this Contract, Contractor hereby grants to DOP a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants

and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to DOP.

The Contractor shall exert all reasonable effort to advise DOP, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. DOP shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. DOP shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

13. COVENANT AGAINST CONTINGENT FEES

The Provider warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Provider for the purpose of securing business. DOP shall have the right, in the event of breach of this clause by the Provider, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or otherwise recover by other means the full amount of such commission, percentage, brokerage or contingent fees. In no event shall DOP be liable for any brokerage or contingent fees.

14. DEBARMENT AND SUSPENSION

By executing this Contract, the Contractor certifies to the Department that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in any transactions by any federal agency or department under Executive Order 12549 "Debarment and Suspension." The Contractor certifies that it will not contract with a Subcontractor that is debarred or suspended.

15. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

16. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a dispute resolution board, or arbitration.

17. DUPLICATION OF BILLED COSTS

The Contractor shall not bill DOP for costs if the Contractor is being paid by another funding source for those same costs.

18. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

19. INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent permitted by law, Provider shall indemnify, defend, and hold harmless the state of Washington, agencies of the state, and all officials, agents, and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. Provider's obligation to indemnify, defend, and hold harmless includes any claim by Provider's agents, employees, representatives, or any Subcontractor, or its employees.

"Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. Provider's obligations to indemnify, defend, and hold harmless includes any claim by Provider's agents, employees, representatives, or any subcontractor or its employees.

Provider expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Provider's or any Subcontractor's performance or failure to perform this Contract. Provider's obligation to indemnify, defend, and hold harmless the state shall **not** be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

Provider waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

20. INDEPENDENT CAPACITY OF CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of DOP. The Contractor will not hold himself/herself out as or claim to be an officer or employee of DOP or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, DOP may collect from the Contractor the full amount payable to the Industrial Insurance accident fund.

DOP may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DOP under this Contract and Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's right to collect from the Contractor.

22. LICENSING

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this Contract.

23. LIMITATION OF SIGNATURE AUTHORITY

Only the DOP Director or the Director's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Director or Director's delegate.

24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

In the event the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, cancelled, or terminated in whole or in part, and the Contractor may be declared ineligible for further Contracts with DOP. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with Section 16 of these General Terms and Conditions, *Disputes*.

25. PRICE WARRANT

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.

26. PRIVACY PROTECTION

Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of DOP or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

DOP reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this Contract. The monitoring, auditing or investigation may include, but is not limited to "salting" by DOP. Contractor shall certify the return or destruction of all personal information up expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of this Contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless DOP for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers or information identifiable to an individual that relates to any of these types of information.

27. PUBLICITY

The Contractor agrees to submit to DOP all advertising and publicity matters related to this Contract wherein DOP's name is mentioned or language used from which the connection of DOP's name may, in DOP's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising or publicity matters without the prior written consent of DOP.

28. RECORDS MAINTENANCE

Contractor shall maintain all books, records, documents, data, and other evidence relating to this Contract and performance of services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by DOP, personnel duly authorized by DOP, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

29. REGISTRATION WITH DEPARTMENT OF REVENUE

Contractor shall complete registration with the Washington State Department of Revenue, and be responsible for payment of all taxes due on payments made under this Contract.

30. RIGHT OF INSPECTION

Contractor and its sub-contractors shall provide right of access to its facilities to DOP, or any of its authorized officers, or to any other authorized agent of official of the state of Washington or the

federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

31. SAVINGS

If funds are not allocated to DOP to continue this Contract in any future period, DOP may terminate this Contract by ten (10) calendar days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. DOP will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DOP agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DOP in the event this section shall be exercised. This section shall not be construed to permit DOP to terminate this Contract in order to acquire similar Services from a third party

32. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

33. SITE SECURITY

While on DOP premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

34. SUBCONTRACTING

The Contractor shall not subcontract work or services contemplated under this Contract and/or use an outside consultant except as provided for in the Statement of Work without obtaining the prior written approval of the Agency for the authority to enter into subcontracts. Contractor acknowledges that such approval for any subcontract does not relieve the Contractor of its obligations to perform hereunder. The Agency retains the authority to review and approve or disapprove all subcontracts. At the Agency's request, the Contractor will forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Subcontractor the Contractor shall:

1. Be responsible for Subcontractor compliance with these General Terms and Conditions and the subcontract terms and conditions; and
2. Ensure that the Subcontractor follows the Agency's reporting formats and procedures as specified by the Agency.

35. TAXES

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

36. TERMINATION, SUSPENSION AND REMEDIES

1. Termination or Suspension for Cause

In the event DOP determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, DOP has the right to suspend or terminate this Contract. Before suspending or terminating this Contract, DOP may, at its sole discretion, notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within the designated amount of time, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the

replacement Contract (e.g., cost of the competitive bidding, mailing, advertising, and staff time).

2. Termination for Convenience

Except as otherwise provided in this Contract, DOP may, by ten (10) days' written notice, beginning on the second day after mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, DOP shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

37. TERMINATION PROCEDURE

Upon termination of this Contract, DOP, in addition to any other rights provided in this Contract, may require the Contractor to deliver to DOP any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of Section 38 if these General Terms and Conditions, *Treatment of Assets*, shall apply in such property transfer.

The DOP shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by DOP and the amount agreed upon by the Contractor and DOP for (1) completed work and service(s) for which no separate price is stated; (2) partially completed work and services; (3) other property or services that are accepted by DOP; and (4) the protection and preservation of property, unless the termination is for default, in which case DOP shall determine the extent of liability of DOP. Failure to agree with such determination shall be a dispute within the meaning of Section 16, *Disputes*, clause of this Contract. The DOP may withhold from any amounts due to the Contractor such sum as DOP determines to be necessary to protect DOP against potential loss or liability.

The rights and remedies of DOP provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination and except as otherwise directed by DOP, the Contractor shall:

1. Stop work under this Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of work under this Contract as is not terminated;
3. Assign to DOP, in the manner, at the times, and to the extent directed by DOP, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case DOP has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DOP to the extent DOP may require, which approval or ratification shall be final for all purposes of this clause;
5. Transfer title to DOP and deliver in the manner, at the times, and to the extent directed by DOP any property that, if the Contract had been completed, would have been required to be furnished to DOP;
6. Complete performance of such part of the work as shall not have been terminated by DOP; and

7. Take such action as may be necessary, or as DOP may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which DOP has or may acquire an interest.

38. TREATMENT OF ASSETS

1. Title to all property furnished by DOP shall remain in DOP. Title to all property purchased by the Contractor, for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in DOP upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in DOP upon (1) issuance for use of the property in the performance of this Contract, or (2) commencement of use of such property in the performance of this Contract, or (3) reimbursement of the cost thereof by DOP in whole or in part, whichever first occurs.
2. Any property of DOP furnished to the Contractor shall, unless otherwise provided herein, or approved by DOP in writing, be used only for the performance of this Contract.
3. The Contractor shall be responsible for any loss or damage to property of DOP that results from the negligence of the Contractor or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. If any DOP property is lost, destroyed or damaged, the Contractor shall immediately notify DOP and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to DOP all property of DOP prior to settlement upon completion, termination or cancellation of this Contract.
6. All reference to the Contractor under this clause shall include Contractor's employees, agents or Subcontractors.

39. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by authorized representative of DOP.